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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,251	09/29/2000	Joseph P. Vadala JR.	T0428/7090 TJO/RHW	3371

7590 08/18/2003

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EXAMINER	
VO, HAI	

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 08/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/676,251	VADALA ET AL.	
	Examiner	Art Unit	
	Hai Vo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 May 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23,34-59 and 65-90* is/are pending in the application.

4a) Of the above claim(s) *34-59* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23 and 65-90* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 22 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

1. Claims 24, 26-33 and 64 have been cancelled in the amendment received on 05/09/2003.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 2, 6-21, 23, 64, 65, 68-82 and 84-90 are rejected under 35 U.S.C. 103(a) as being obvious over WO 99/04968 as evidenced by Brilliant et al (US 5,897,011). WO'968 teaches an article comprising a microcellular polymeric material having an average cell size of less than 100 microns and a substrate adhered to surface of the microcellular polymeric material (page 5, lines 15-20). WO'968 teaches the article having a thickness of less than 0.150 inch. Likewise, it is apparent that the layer of microcellular polymeric material in the article must have a thickness less than 0.150 inch, within the claimed range. Further, WO'968 discloses the microcellular polymeric material having a thickness of 0.1 inch (page 12, line 24). WO'968 teaches the laminated article free of external adhesive (column 4, line 46). WO'968 is silent as to the curved cross-section of the article. However, WO'968 discloses the use of the laminated articles in food packaging (page 5, lines 10-13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the laminated article having a non-planar surface because the food packaging containers are

typically cylindrical, semi-cylindrical, or of curved surface in shape as shown in figure 4 of US 5,897,011.

With regard to claims 2, 6, 65, and 68, WO'968 teaches the article comprising a single layer of plastic film (figure 7).

With regard to claims 7 and 69, WO'968 teaches the microcellular polymeric material is essentially free of any residual chemical blowing agent or reaction by-product of chemical blowing agent (page 8, lines 10-15).

With regard to claims 9-13, and 70-74, WO'968 teaches the laminated article comprising a substrate being formed from a microcellular material (page 10, line 31). It is the examiner's position that the substrate would inherently comprise a polymer having a softening temperature closed to that of the microcellular core material.

With regard to claims 14, 15, 75 and 76, WO'968 teaches the microcellular material having a void fraction from 5% to 98%, the range disclosed by WO'968 encompasses the claimed range of the present invention (page 5, line 9).

With regard to claims 16 and 77, WO'968 discloses the article having a thickness of less than 0.15 inch (column 3, line 3).

With regard to claims 17-19, and 78-80, WO'968 does not specially disclose the length-to-thickness ratio of the article. It would have been an obvious matter of design choice to have altered the length-to-thickness ratio of the article, since such a modification would have involved a mere change in the size of the article.

A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

With regard to claims 20, 21, 23, 81, 82 and 84, WO'968 reads on the claim limitations (column 4, lines 18-20 and figure 7).

4. Claims 3-5, 22, 66, 67 and 83 are rejected under 35 U.S.C. 103(a) as being obvious over WO 99/04968 in view of LaMarca II (US 5,456,976) as evidenced by Brilliant et al (US 5,897,011). WO'968 is silent as to the fabric substrate adhered to the surface of the microcellular material. LaMarca II teaches a padded laminate comprising a foam layer B bonded to a fabric layer A that includes decorative feature (column 4, lines 30-49, and figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the plastic film layer with a fabric layer motivated by the desire to provide an aesthetically pleasing facing layer.

With regard to claims 4, 5, 66 and 67, LaMarca II teaches the fabric material made of a polypropylene fabric (column 4, lines 40-42). None of the cited art discloses or suggests the thickness of the fabric layer. Thus, the skilled artisian must rely on his own knowledge. It would be obvious to one of ordinary skill in the art to employ as little of the layer of fabric as possible in order to reduce cost. Thus, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the fabric layer having the thickness instantly claimed since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering

the optimum or workable ranges involved only routine skill in the art. ***In re Aller***, 105 USPQ 233.

Terminal Disclaimer

5. The terminal disclaimer filed on 05/09/2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,235,380 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

6. The art rejections over Keiser have been overcome by the present amendment.
7. The 102 art rejections over LaMarca are moot in view of the claim cancellation.
8. The art rejections over Keiser have been overcome by the present amendment and response (page 3 of Paper no. 24).
9. The 103 art rejections over Tupil are improper for two reasons. The claimed invention was filed after November 29, 1999 and the Tupil patent with 102(e) date and the claimed invention were, at the time the invention was made, owned by Texel Inc.
10. The double patenting rejections have been overcome by the terminal disclaimer.
11. Applicant's arguments with respect to claims 1-23, and 65-90 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Tue-Fri, 8:30-6:00 and on alternating Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV
August 4, 2003

TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700